ISMAIL RASID

v.

PP

HIGH COURT MALAYA, ALOR SETAR
KN SEGARA J
[NO: 42-4 OF 1999]
8 SEPTEMBER 1999

CRIMINAL PROCEDURE: *Sentence - Rape - Rape of own daughter - Sentence of 12 years imprisonment and 3 strokes of the rotan - Whether inadequate - Whether to be enhanced - Criminal Procedure Code, s. 316(b)*

In the Sessions Court, the appellant had pleaded guilty to two charges of rape of his 14-year old daughter, and was sentenced to 12 years imprisonment and 3 strokes of the rotan on each of the charges. The appellant appealed against the sentence imposed and the question that arose was whether, on the facts, the appellate court ought to instead enhance the sentence.

Held:

[1] When a father rapes his daughter and is convicted in court, any sentence passed must reflect the abhorrence of society to such a heinous and despicable act. A strong and effective signal must also be sent to would-be rapists of this species that the court would not hesitate to come down hard on them, in order to protect those innocent children.

[2] Incest is a sin that can hardly be forgiven. This appeal, accordingly, is a classic example of a case where no 'discount' should be given to the appellant for having pleaded guilty. In the event, pursuant to s. 316(b) Criminal Procedure Code, the sentence imposed is set aside and substituted with a sentence of 20 years imprisonment and 5 strokes of the rotan for each of the two charges. The sentences are to run from the date of arrest.

[Appeal dismissed. Sentence enhanced accordingly.]

For the appellant - In person
For the PP - Wan Norzanuar Wan Ahmad DPP

Reported by WA Sharif

JUDGMENT

KN Segara J:

The appellant was convicted on his own plea of guilty to two charges of rape against his 14 year old daughter *vide* Tawar Police Report No. 85/99 dated 28 March 1999 (Sessions Court, Sungai Petani Arrest Case No. 62-20-99). He was sentenced to 12 years imprisonment and three strokes of the rotan on each of the charges by the learned Sessions Court judge. The sentence of imprisonments were to run from the date of arrest (that is, concurrently).

The appellant was unrepresented at the trial court as well as in the High Court. The record shows that in mitigation, before the trial court, he had pleaded for a lenient sentence on the ground that he had repented and had children to take care. Before me, the appellant, who had appealed against sentence, did not plead to reduce the sentence but, instead, pleaded that **all** his sentences be made to run concurrently. I was a bit puzzled and upon inquiry by the court it transpired that the appellant had also been convicted on a charge of raping another daughter aged 12 years, *vide* Tawar Police Report No. 82/99 (Sessions Court Sungai Petani Arrest Case No. 62-21-99) and for which offence he was sentenced to 15 years imprisonment and six strokes of the rotan. The learned Sessions Court judge had ordered this sentence to run consecutive to the sentence that she had imposed in Sessions Court Sungai Petani Arrest Case No. 62-20-99, the subject matter of appeal before me. The appellant has appealed against that sentence as well, but as that appeal is fixed before another brother judge, I do not propose to deal with it in the present appeal.

The facts to which the appellant had admitted at the trial court, in respect of this appeal before me, clearly show that the appellant had, without any compunction, resorted to give expression to his lust and libido by raping his daughter, notwithstanding her cries in pain. He had raped his own daughter in his house during the absence of his wife and other children on several occasions, over a period of time.

Incest is a sin that can hardly be forgiven. Therefore, when a father **rapes** his daughter and is convicted in court, any sentence passed **must reflect the abhorrence of society** to such a heinous and despicable act. A sufficiently strong and effective signal must also be sent out to would-be rapists of this species that the court would not hesitate to come down hard on them, **in order to protect** those naive, helpless and innocent children who had placed unquestioning trust, faith, loyalty and confidence in their fathers to be role models as well as pillars of strength and protection at all times, only to see their lives shattered, humilated and traumatized by an act of lust that could have easily been curbed and controlled by any self-respecting human being.

Perhaps, I should take this opportunity to impress upon Sessions Court judges, particularly in the State of Kedah, that the incidents of rape committed by fathers on their daughters seem to be rampant. Offenders think that a plea of guilty would enable them to escape the consequences of a severe penalty. It is a fallacy to think that the courts are prohibited from meteing out the maximum sentence permitted for the offence, upon a plea of guilty. Judicial officers, too, should not labour under the notion that in determining an appropriate sentence, a "discount" should **automatically** be given in **all** cases upon a plea of guilty, **without prior exercise of judicial discretion** to all facts and circumstances relating to the offence, the offender, the victim, the interest of the public, as well as the Malaysian culture, social behaviour and propriety.

This appeal before me is a classic example of a case where no "discount" should be given to the appellant for having pleaded guilty. The sentence must reflect Malaysian society's abhorrence to crimes of this nature. The appellant should be kept away from his daughters for as long as possible – nay, not just his daughters, perhaps, other children as well, for he may consider them as desirable prey to satiate his lust. Accordingly, under s. 316(b) Criminal Procedure Code the sentence imposed by the learned Sessions Court judge is set aside and substituted therefor a sentence of 20 years imprisonment and five strokes of the rotan for each of the two charges. The term of imprisonments is to run from the date of arrest.

Appeal dismissed. Sentence enhanced.